



U.S. Department
of Transportation

Federal Railroad
Administration



FRA's Conrail Merger Safety Assessment
and
Surveillance Plan

FRA's Conrail Merger Safety Assessment **and** **Surveillance Plan**

1.0 Background:

On June 23, 1997 the acquiring railroads (CSX and NS) filed their application with the Surface Transportation Board (STB) to acquire Conrail. The proposal was to divide Conrail's assets, and create two rail networks that will compete with one another throughout the eastern United States (\$10.2 billion acquisition with 58%/42% division of ownership, respectively, by NS/CSX). Over a ten-month period FRA conducted a formal safety assessment of the proposed mega-merger and participated in a series of STB scheduled filings.

In August 1997 FRA initiated its safety assessment of the NS/CSX proposed acquisition by reviewing both applicant's proposed operating plans, and also performing an analytical safety risk assessment of some 61 affected line segments at CS/NS/CR. It was determined that detailed safety planning was not provided in either railroad's operating plans (not previously required in ICC/STB filings), and that there were at least four major route segments of the planned merger with projected safety risk increases of greater than 50%. During this same time period, FRA also performed parallel safety reviews of the service performance "meltdown" occurring at UP/SP and operations at BNSF, CSX, NS and Conrail. On October 21, 1997 DOT (FRA) filed its findings with STB and recommended that the Applicants be required to develop "first time ever" ***Safety Integration Plans (SIPs)***. Within two weeks the STB ordered CSX and NS to develop Safety Integration Plans (SIPs) within 30 days which extended the merger processing schedule by 45 days.

FRA immediately went to work to assist the railroads in effectively structuring their SIPs by developing ***Safety Integration Plan Guidelines*** (rev. 3 of 11/24/97). These guidelines covering 13 safety-critical areas (including corporate safety culture) were furnished to the applicant railroads in early November 1997. Thereby, the applicant railroads were able to quickly and diligently prepare their planned merger safety actions and filed their completed SIPs with STB on the December 3 deadline.

Although their SIPs were considered complete for STB's purposes, both railroads have continued to work closely with DOT (FRA) to identify additional timing (schedules) and resource allocations (workforce and \$) for all of their SIP specified safety action items. Both railroads provided 30-40 page documents with itemized safety actions (60-70) to be accomplished over the proposed three- five year integration period. These more detailed safety actions have become referred to as ***Safety Integration Plan Accountability (SIPA)*** worksheets. FRA plans to use these documented commitments (planned safety actions with assigned resources) by both railroads as the primary baseline to monitor progress of their merger implementation (integration). In a written decision issued on July 23, 1998 the STB

approved the Conrail merger with certain conditions.

Office of Safety Assurance and Compliance

2.0 Merger SIP/Safety Integration Surveillance:

2.1 Following approval of the merger by STB, CSX and NS have jointly agreed to proceed from “Control Date” to “Split Date” (“Day One” or “Closing Date”) in a planned approach. “Day One” is the date on which applicants will effect the division between CSX and NS of the operation and use of the assets of Conrail. The conditions set forth by the STB in its merger approval for CSX and NS are inherently expected to delay any significant merger related safety action items by either party until the Fourth Quarter of 1998 or until January 1, 1999, or thereafter.

2.2 The items in which DOT(FRA) will concentrate for SIP/safety surveillance and the assessment of progress towards successful merger integration include:

- # The SIPs and SIPAs filed by each railroad and the CSAO.
- # Present operating safety conditions at each railroad (CSX, NS and Conrail acquired properties and CSAO); safety audits and surveys; statistical reporting of the affected railroads; and examination of inspectors reports/violations.
- # Review of past and on-going Safety Assurance and Compliance Program (SACP) efforts at each railroad.
- # Close surveillance of progress made by each railroad on the safety related merger conditions set by the STB.
- # Liaison review with the STB on evaluation of Operational Monitoring reports tendered by each railroad (15 specific reporting requirements imposed by STB).

2.3 The STB in its approval of the merger imposed a five (5) year oversight condition, as well as the following safety related conditions:

(1) “Applicants should meet with labor representatives and attempt to form task forces for the purpose of promoting labor-management dialogue concerning implementation and safety issues.”

(2) “Applicants must comply with the environmental mitigation conditions set forth in Appendix Q.” For the purpose of SIP/safety surveillance, FRA will focus upon those conditions which are explicitly safety related: Conditions 1(A), 1(B), 1(C), 1(D), 2, 3, 4(A), 4(B), 4(C), 4(D), 5(A), 5(B), 6, 7, 8(A), 8(B), 9, 10, 19, 20(A), 20(B), 20(C), 21, 22(A), 22(B), 22(C), 23, 24, 25, 26(A), 26(B), 26(C), 26(D), 27(A), 27(B), 27(C), 28, 29(A), 29(B), 29(C), 29(D), 30(A), 30(B), 30(C), 31(A), 31(B), 31(C), 31(D), 31(E), 31(F), 31(G), 32(A), 32(B), 32(C), 33, 34(A), 34(B), 34(C), 34(D), 35, 36(A), 36(B), 37, 38(A), 38(B), 38(C), 39, 40, 41(A), 41(B), 41(C), 42(A), 42(B), 43(A), 43(B), 46, 49(A), 49(B)

and 50.

Office of Safety Assurance and Compliance

(3) “The Promotion of Safety. Our decision clearly promotes safety. More than half of the environmental conditions involve safety. For the first time ever in a merger, the applicants were required to submit safety integration plans. And, as part of the merger implementation oversight, the implementation of these plans will be carefully monitored through a *Memorandum of Understanding* (MOU) between the Board and the Department of Transportation, which clearly represents a cooperative governmental initiative in the public interest.”

3.0 Merger SIP/Safety Surveillance Staff:

FRA’s intent is to monitor the progress of the safety integration of each railroad with the least intrusive measures and procedures as feasible to do so. FRA, however, will use headquarters staff, regional officers and local field inspectors and all of its compliance tools, as required, to conduct close surveillance and monitoring of the progress of the merger. Responsibility for overall monitoring oversight will be vested with FRA’s Office of Safety Assurance and Compliance (*see Conrail Merger Safety Surveillance organizational chart, page 5*). There will be an FRA assigned Senior Surveillance Officer and Director, Surveillance to assure that monitoring activities and proficient surveillance practices remain on track throughout the required period of merger integration. These officers will be the headquarters contacts for CSX, NS, the CSAO and the STB. Reporting through the Director, Surveillance will be three (3) Regional Surveillance Officers responsible for the oversight of specific safety related actions taken by CSX, NS and the Conrail Shared Assets Operations (Conrail). Each Regional Surveillance Officer will have several strategically located SIP/safety monitors (inspectors) that will report compliance with the SIP action items and other operating safety conditions. The Regional Surveillance Officers will use all of the methods identified in Section 2.1 thru 2.3 to appropriately assess the progress made on SIP safety action items and the progress of merger integration related to local safety conditions in their assigned areas.

4.0 Merger Safety Progress Reviews/Reports:

4.1 All items addressed in Section 2.0 are to be considered in the on-going SIP/safety progress reviews. Written monthly SIP/safety assessment progress reports will developed by the Regional Surveillance Officers and submitted to FRA headquarters (Office of Safety Assurance and Compliance through the Surveillance Director). Copies of these reports are to be furnished to the designated liaison officers from CSX, NS and the CSAO (Conrail) on a current basis.

4.2 The headquarters Director, Surveillance will provide independent summary progress reports on the merger integration to FRA’s senior management as required. Comprehensive written reports on SIP/safety progress will be provided by FRA to the STB on a biannual basis (January and July 1) of each year starting in 1999 as specified in the MOU. FRA will provide copies of these reports to CSX, NS and the CSAO (Conrail) on a current basis. The style and format of these reports will be determined by FRA staff.

4.3 FRA's Director, Surveillance and/or the Regional Surveillance Officers will conduct frequent SIP/safety integration reviews separately with NS, CSX and CSAO designated liaison officers (at least quarterly). These reviews will be conducted on a formal basis with meeting minutes and written summary findings to be provided. The progress summaries and meeting minutes will be separately retained on FRA's files for CSX, NS, and the CSAO.

4.4 During the period of time between the "control date" of the STB approved acquisitions and the "split dates" for CSX and NS, FRA staff will establish the surveillance organization referenced on page 5 and will perform interim monthly report monitoring on the same basis as described in Sections 4.1 thru 4.3.